

Foreign-Trade Zones Board, Commerce

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the notification (and the zone grantee, if it did not submit the notification) that:

(1) Further review is not needed for all or part of the activity that is the subject of the notification, and that the activity in question may be conducted; or

(2) Further review is needed for all or part of the activity that is the subject of the notification, with such activity precluded absent specific authorization.

(d) *Authorization for commencement of an activity on an interim basis.* For an activity notified pursuant to § 400.14(a), the Executive Secretary may authorize the commencement of some or all of the activity on an interim basis. Such authorization shall only be made based on a showing that commencement of the activity is time-sensitive, with such showing to include comments from CBP that specifically address the projected timeframe for commencement of the activity. Interim authorization shall not apply to materials or components subject to an AD/CVD order or proceeding or suspension of liquidation under AD/CVD procedures. As warranted, a determination that further review is needed for all or some of the notified activity pursuant to § 400.37(c) may also revoke the interim authorization until the Board makes a determination after conduct of that further review.

§ 400.38 Procedure for application for minor modification of zone.

(a) The Executive Secretary shall make a determination in cases under § 400.24(c) involving minor modifications of zones that do not require Board action, such as boundary modifications, including certain relocations, and shall notify the applicant in writing of the decision within 30 days of the determination that the application or request can be processed under § 400.24(c). The applicant shall submit a copy of its application/request to CBP no later than the time of the applicant's submission of the application/request to the Executive Secretary.

(b) If not previously provided to the applicant for inclusion with the applicant's submission of the application/request to the Executive Secretary, any

CBP comments on the application/request shall be provided to the Executive Secretary within 20 days of the applicant's submission of the application/request to the Executive Secretary.

Subpart E—Operation of Zones and Administrative Requirements

§ 400.41 General operation of zones; requirements for commencement of operations.

(a) *In general.* Zones shall be operated by or under the general management of zone grantees, subject to the requirements of the FTZ Act and this part, as well as those of other federal, state and local agencies having jurisdiction over the site(s) and operation(s). Zone grantees shall ensure that the reasonable zone needs of the business community are served by their zones. CBP officials with oversight responsibilities for a port of entry represent the Board with regard to the zones adjacent to the port of entry in question and are responsible for enforcement, including physical security and access requirements, as provided in 19 CFR part 146.

(b) *Requirements for commencement of operations in a zone.* The following actions are required before operations in a zone may commence:

(1) The grantee shall submit the zone schedule to the Executive Secretary, as provided in § 400.44.

(2) Approval or concurrence from the grantee and approval from CBP, pursuant to 19 CFR part 146, are required prior to the activation of any portion of an approved zone; and

(3) Prior to activation of a zone, the operator shall obtain all necessary permits from federal, state and local authorities, and except as otherwise specified in the Act or this part, shall comply with the requirements of those authorities.

§ 400.42 Operation as public utility.

(a) *In general.* Pursuant to Section 14 of the FTZ Act (19 U.S.C. 81n), each zone shall be operated as a public utility, and all rates and charges for all services or privileges within the zone shall be fair and reasonable. A rate or charge (fee) may be imposed on zone participants to recover costs incurred by or on behalf of the grantee for the

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performance of the grantee function. Such a rate or charge must be directly related to the service provided by the grantee (for which the fee recovers some or all costs incurred) to the zone participants. Rates or charges may incorporate a reasonable return on investment. Rates or charges may not be tied to the level of benefits derived by zone participants. Other than the uniform rates and charges assessed by, or on behalf of, the grantee, zone participants shall not be required (either directly or indirectly) to utilize or pay for a particular provider's zone-related products or services.

(b) *Delayed compliance date.* The compliance date for the requirements of paragraph (a) of this section shall be February 28, 2014.

§ 400.43 Uniform treatment.

Pursuant to Section 14 of the FTZ Act (19 U.S.C. 81n), a grantee shall afford to all who may apply to make use of or participate in the zone uniform treatment under like conditions. Treatment of zone participants within a zone (including application of rates and charges) shall not vary depending on whether a zone participant has procured any zone-related product or service or engaged a particular supplier to provide any such product or service.

(a) *Agreements to be made in writing.* Any agreement or contract related to one or more grantee function(s) and involving a zone participant (e.g., agreements with property owners and agreements with zone operators) must be in writing.

(b) *Evaluation of proposals.* A grantee (or person undertaking a zone-related function(s) on behalf of a grantee, where applicable) shall apply uniform treatment in the evaluation of proposals from zone participants. Uniform treatment does not require acceptance of all proposals by zone participants, but the bases for a grantee's decision on a particular proposal must be consistent with the uniform treatment requirement.

(c) *Justification for differing treatment.* Given the requirement for uniform treatment under like conditions, for any instance of different treatment of different zone participants, a grantee (or person undertaking a zone-related

function(s) on behalf of a grantee, where applicable) must be able to provide upon request by the Executive Secretary a documented justification for any difference in treatment.

(d) *Avoidance of non-uniform treatment.* To avoid non-uniform treatment of zone participants, persons (as defined in § 400.2(1)) within key categories set out in paragraph (d)(2) of this section shall not undertake any of the key functions set out in paragraph (d)(1) of this section (except in specific circumstances where the Board has authorized a waiver pursuant to paragraph (f) of this section).

(1) Key functions are:

(i) Taking action on behalf of a grantee, or making recommendations to a grantee, regarding the disposition of proposals or requests by zone participants pertaining to FTZ authority or activity (including activation by CBP);

(ii) Approving, or being a party to, a zone participant's agreement with the grantee (or person acting on behalf of the grantee) pertaining to FTZ authority or activity (including activation by CBP); or

(iii) Overseeing zone participants' operations on behalf of a grantee.

(2) Key categories of persons are:

(i) A person that currently engages in, or which has during the preceding twelve months engaged in, offering/providing a zone-related product/service to or representing a zone participant in the grantee's zone;

(ii) Any person that stands to gain from a person's offer/provision of a zone-related product/service to or representation of a zone participant in the zone; or

(iii) Any person related, as defined in paragraph (e) of this section, to the person identified in paragraphs (d)(2)(i) and (ii) of this section.

(e) *Definition of related persons.* For purposes of this section, persons that are related include:

(1) Members of a family or members of a household. The term members of a family means spouses, parents, grandparents, children, grandchildren, siblings (including half-siblings and step-siblings), aunts, uncles, nieces, nephews, and first cousins, as well as the parents, children, and siblings of a